Mr. Vivona called the Meeting to Order at 7:30 P.M with the reading of the Open Public Meetings Act.

Oath of Office was administered by Mr. Shaw to: Gregory Borsinger

**Roll Call:** 

Mr. Vivona Mrs. Kenny Mr. Weston, Mr. Williams

Mrs. Romano, Mr. Styple Mr. Borsinger

Mr. Hyland, Alt. 2

Absent: Mr. Weston, Mr. McCaffrey, Alt. 1

**Professionals Present:** Steven Shaw, Attorney

John Ruschke, Engineer Robert Michaels, Planner

Minutes: January 22, 2015, February 11, 2015

Motion to accept the minutes as submitted was made by Mr. Williams, seconded by Mrs. Kenny In favor. Mr. Borsinger abstained.

#### **Memorializations:**

#### 2014 Annual Report

Mr. Shaw noted that this resolution had been submitted for the Board Members review and asked if there were any comments. None Heard. A motion was then made by Mr. Williams seconded by Mrs. Kenny to accept the Annual Report as submitted.

Roll Call: Mr. Vivona, Mrs. Kenny, Mr. Williams, Mrs. Romano, Mr. Styple, Mr. Borsinger and Mr. Hyland, In Favor . Mr. Borsinger abstained.

#### Mr. & Mrs. McWilliams

**Calendar BOA 14-92-15** 

34 Edgewood Road Block: 92 Lot: 15

Brian Siegel, Architect

Mr. Shaw said the Resolution had been submitted for review and if there were no comments/corrections it would be appropriate to make a motion to approve this Resolution as distributed.

A motion was made by Mr. Williams seconded by Mr. Styple to approve the Resolution of Memorialization as submitted.

Roll Call: Mr. Vivona, Mrs. Kenny, Mr. Williams, Mrs. Romano, Mr. Styple, Mr. Borsinger and Mr. Hyland, In Favor. Mr. Borsinger abstained.

#### **Hearings:**

Mr. Shaw advised that if anyone was present for **Golden River Homes, LLC** it would be carried to the March 19<sup>th</sup> meeting with no further legal notices required.

#### Mr. & Mrs. McCabe

Calendar BOA 14-48.10-24 9

Hampton Road Block: 48.10 Lot: 24.

Mr. Vivona asked for a brief over view of their project. A site visit will be set for 9 a.m. on March 7<sup>th</sup>. We would request that any area being affected be marked so we can get a visual of impact. At our March 19<sup>th</sup> meeting we will discuss the project in more detail.

Mr. Klesse, Architect Mr. McCabe, applicant, sworn

Mr. McCabe, a resident of Chatham for 30 years and has been very active in the community. Several years ago Mrs. McCabe's 90+ year old mother was going to live with us. Our house, at that time had a lot of stairs which was not conducive to her needs. We found a house but it needs some renovations. There is an existing patio outside the family room so we have asked our architect to design a screened in porch to protect us from mosquitos (adjacent to great swamp) to replace the existing stone patio.

Mr. Klesse said he had brought some pictures (A7- composite picture board) to show the existing house. They have expanded this whole floor so they could get the master bedroom up stairs. They are installing an elevator. We are proposing a small addition on the right side. We will also be constructing a screened deck with a roof over it. When you get there go down the driveway to the rear we will stake out where the deck will be placed. Two neighbors have talked with us and are satisfied with what is proposed. We are seeking to cover a portion of the deck approximately 290 sf. He explained the areas to be affected. This allows us two rooms on the first floor. We tried to tuck everything so it's in scale with the existing building. He explained the roof area that requires the variance. Re: Sheet CPOA 4 – shows the garages, screened porch area and the back of the two story element. To the rear of the building is the screened porch. Sheet CPOA5 is the right side of the house/construction.

Mrs. Kenny questioned the second story of the screened porch area. Will there be any access?

Mr. Vivona asked if the roof over the deck was going to be just that – a roof.

Mr. McCabe said coming out of the eating area there was just a grill under it. If you were going down to the family room you could walk directly into the screened porch or go through the shrubbery area onto the deck and then into the screened porch. He noted that they already had a building permit to construct. The patio is existing

Mrs. Kenny was wondering what happened. Did you start and then discover that you needed a variance?

Mr. McCabe said he had talked with Greg he told us we could proceed. We then addressed the deck. We had first had open decking but the screen porch triggered this application. No variances had been needed for the original project.

Mr. Hyland asked if any approvals were needed due to their closeness to the swamp.

Mr. Kleese said there were none.

Mr. Vivona advised that they would have their site visit on March 7<sup>th</sup> at 9 a.m. and the application would be carried to the Regular March meeting.

#### Dunning/Penizotto,

Calendar BOA 14—48.17-129.01

317 Green Village Rd.

James Peter Kokkalis, Architect

Site Visit Report read into the record by Mr. Vivona.

Mr. Vivona questioned the portico.

Mr. Kokkalis said the platform will be rebuilt but it will be within that area.

Mr. Vivona noted that the house was already built close to the road as it is an older home and it is pre-existing non-conforming. We couldn't get a good view of the deck area so he asked that Mr. Kokkalis describe what is proposed.

Mr. Kokkalis said there were two decks. The rear deck will be off the back adjacent to the existing kitchen and the other will be small and off a bedroom. The applicants are now questioning if they could make the rear deck another 3-4 ft. deeper from the back.

Mr. Vivona asked what the distance from the house now to the rear yard setback was.

Mr. Kokkalis said it was 200 ft.

Mr. Vivona – to clarify – basically what you are saying is the applicant wants to amend their application to increase the size of the deck which will not require and additional variance relief.

He noted that the main thing about the variances is that they are both for pre-existing non-conforming. They are not expanding/extending the footprint of the house except for the deck which is pervious. Mr. Vivona felt that this was pretty straight forward. He asked if anyone had any questions/comments.

Mr. Williams asked where the second floor addition was shown on the plans. Was it just a little deck.

Mr. Vivona said essentially you are going up on the second floor but there are existing conditions creating the hardship as to the property because of the location of the structures. You are also changing the siding to the exterior which will improve the overall aesthetics and appearance to the house.

Mr. Kokkalis said it will enhance the house as it will all be conforming/matching. The windows in the addition will match the rest of the house (other windows had been replaced last year)

Mr. Vivona asked if there were any comments/questions from the public. None heard. He then asked if anyone wanted to make a motion. A motion was made by Mr. Williams seconded by Mrs. Kenny that the variance be approved as requested.

Roll Call: Mr. Vivona, Mrs. Kenny, Mr. Williams, Mrs. Romano, Mr. Styple, Mr. Borsinger and Mr. Hyland, In Favor Mr. Borsinger abstained.

Mr. Shaw said there would be a Resolution for this matter on March 19<sup>th</sup> which will be memorialized. Once memorialized the applicant may go forward for permits.

Mr. & Mrs. Treacy

Calendar BOA 14-48.01-12

3 Glenmere Drive Block: 48.01 Lot: 12

Mrs. Kenny – recused

Ms. Hoffman, Hoffman Architects Mr. Rodrigues, Architect (sworn)

Site Visit Report of February 7<sup>th</sup> read into the record.

Mr. Rodrigues testified to what is proposed. We are adding a front portico which 45 sf., 5 ft. deep by 9 ft. wide. What is proposed is consistent with the neighborhood. Existing is 10.1 ft. from the property line and 15 ft. is required.

Mr. Vivona asked about the visibility of the shed.

Mr. Rodrigues said there are some trees surrounding the shed.

Mr. Vivona asked if the portico was going on the existing structure.

Mr. Rodrigues said currently the existing one is about 7 ft. and we are adding a foot on either side. The stairs are staying the same way, it is just the landing. The reason we made the landing a little wider was to place the columns in such a manner as to allow visibility from the windows.

Mr. Vivona noted that on the site report he had misunderstood Ms. Hoffman when she said it was going to stay the same size. She did say the stairs would stay the same size. To clarify - there will be additional footage for the expanded landing.

Mr. Vivona asked if any neighbor had complained about the shed and he was advised by Mrs. Treacy that they had not said anything.

Mr. Vivona asked if there would be any gutters on the sides of the portico. Will they drain naturally or are you going to put it with the rest of the drainage for the house?

Mr. Rodrigues said they have not gotten that far.

Mr. Vivona commented that it was a small roof area and he doubted if it would be an issue but if you have down spouts and it rains then it will go to where you might be walking. Due to the small roof area he felt it probably was not an issue.

Mr. Vivona asked if there were any other questions/comments from the Board/Public. None Heard.

He then asked if anyone wanted to make a motion. A motion was made by Mr. Williams seconded by Mrs. Romano that the variances be approved as requested.

Roll Call: Mr. Vivona, Mr. Williams, Mrs. Romano, Mr. Styple, Mr. Borsinger and Mr. Hyland In Favor. Mr. Borsinger abstained.

Mr. Shaw advised that a Resolution for this matter will be presented at March 19<sup>th</sup> for memorialization. Once memorialized the applicant may go forward for permits.

#### James & Cheryl Brill

Calendar BOA 13-48.18-140

403 Green Village Road

Block: 144 Lot: 48 & Block: 48.18 Lot: 140, 142, &143.

Mr. James Weber, Attorney

Mr. Murphy, Murphy & Hollows, Engineer

Mr. Madden, Planner

Site Visit Report of February 7<sup>th</sup> read into the record by Mr. Styple.

Mr. Vivona said as far as the buildings go we have already approved the free standing bathrooms and amended that as you want to keep them in the existing farm house. The minimal bump out you are doing is on the sale side of the property and also on the inside away from the street. Mr. Vivona did not see any issue there. The farmhouse itself, as you stated, is an office and not a year round residence. There is also a deck proposed so you can look out over the property. That part is pretty straight forward. A lot of the other variances are due to a change in the reassessment value of your land development.

Mr. Brill said the Tax Assessor changed the assessment a few years ago.

Mr. Vivona noted that there wasn't any new construction going on; everything is existing and it's just realigning the lots to be one lot which causes two houses to be on one lot. Again those are temporary living accommodations.

Mr. Brill said they were.

Mr. Vivona, to clarify, there are multiple lots here. You are only talking about consolidation of two lots. One lot currently contains the area where the animal enclosure is and also they include two farmhouses (one on each lot) that are being consolidating. You are consolidating those two lots into something that will be slightly less than 5 acres.

Mr.Brill said it would be 4.96 ac.

Mr. Vivona asked if the reason for doing that is to make that lot applicable to farmland assessment.

Mr. Weber said with regard to the Farmland Assessment, these are contiguous properties to the main farm and under the Farmland Assessment Act that entitles him, for tax purposes, considered part of that. When we put the change into the Tax Assessor he said no. When we went to the tax court it was decided that we come to the Board in order to confirm that it was approved. In terms of the consolidation it produces 4.96 acres that is something under the requirement for your R1 zone. When keeping animals you have to have 5 acres. If the Board feels that avoiding the variances by keeping the lots the way they are then that is something that Mr. & Mrs. Brill would accommodate. It really doesn't change within the field. It doesn't change it from a farmland standpoint. It is really a mechanism in response to seeing how to best manage that parcel.

Mr. Vivona – since the Township has an ordinance which requires that farm animals in a residential zone have a 5 acre area then your proposal was to seek a minor variance for .03 acres to try to get something which is more conforming than currently exists.

Mr. Hyland asked if he could be shown which lots are combined.

Mr. Brill said it would be lot 143 and 142.

Mr. Hyland asked if these were the two to be melded together.

Mr. Brill acknowledged that they were or we could leave them separate.

Mr. Vivona noted that if they are melded together we are then closer to the 5 acre

Mr. Shaw thought this should be part of the record rather than something that was discussed at the site inspection. You might want to discuss where the animals are currently and where they are allowed to go on the property.

Mr. Brill referred to the far west section, lot 143 to the road and around the corner to 142 and then on to lot 140.

Mr. Weber asked if you would say the southern point of your property near the utility company.

Mr. Brill said that was correct.

Mr. Weber thought it could be said that they had a long pasture where they are allowed to roam.

Mr. Shaw asked where the Peacocks were located and was advised that they would be on lot 140.

Mr. Weber asked what was the most number of animals that you have had in this area.

Mr. Brill said about 7 or 8.

Mr. Weber asked if Mr. Brill would be willing to agree to condition, if the Board approves this application, to limit the maximum number of animals. Mr. Brill Agreed (lots 140, 143).

Mr. Weber said the Board may recall that there was a reference to the number of peacocks.

Mr. Hyland asked how one distinguishes between livestock and poultry. If you want to limit it to livestock and then to poultry.

Mr. Weber said in terms to livestock could also mean for human consumption. These animals are not for consumption.

Mrs. Romano asked if the purpose of the animals was for visitors or for the farm.

Mr. Brill said they were an attraction. We have always had animals.

Mr. Hyland asked if you could say it was not a petting zoo, there are no coin operated feeders, any rides, etc. They are just there.

Mr. Brill it's a market thing.

Mr. Weber said in terms of the farming ordinance that would permit keeping them. As Mr. Brill indicated he has had animals for years and would like to keep that part.

Mr. Vivona said that the animals, until the Tax Assessor, were there legally. There was no issue before. Now the tax assessment forces him into the market garden thing – now the animals that had been there legally before now becomes an issue.

Mr. Shaw said what it becomes - market gardens are a conditional use and if everything complied with everything then it's a Planning Board issue. Where there is a variance requested from one of the conditional uses, such as you are not allowed to have farm animals that is a variance conditions which is one of the things being requested.

Mr. Weber – to follow up on that said the standard is whether or not the property can accommodate/deviate from that conditional use standard. The use is permitted but you have to have a variance from the condition. We are arguing that the animals have been there on the farm for as long as he has owned it. They have been there for a number of years and are part of the farming aspect. The other variance with regard to the conditional use standard is again the farming Market Garden Ordinance which talks about vegetables, fruits eaten for consumption. There is nothing being grown on these lots for consumption.

Mr. Hyland asked if you could explain what the Tax Assessor did that made all of this happen.

Mr. Weber said in 2007 after Mr. Brill had purchased one 142 and 143 and incorporated it into his farm, pursuant to the judgment of the Honorable Reginald Stanton, which allowed for the extension of the farm which regulates plot 140 the Zoning Officer said he, disagreed with this. How come you are extending it? We corresponded with him in 2007 and provided him with the backup information provided by the Board of Adjustment Resolutions with regard to this and as a result the Tax Assessor went with the Farmland Assessment and the Zoning Officer said they were permitted under the prior history. Even prior to that in 2003 the ten acres across the street were farmland assessed. Again, there was a change in the tax assessor appointed.

Mr. Hyland - so when the new tax assessor came in everything was okay.

Mr. Weber said that was correct. You have to apply every year for farmland assessment so when the Brill's applied for Farmland Assessment he denied it saying that it was not permitted under our ordinance. That is when I lawyered and filed notice of appeal. We took an appeal to the tax court and took our position saying that we were entitled to proceed ahead. It was when I was standing outside in the County down in Newark that Carl Woodward (Township Attorney at that time) came up to me and said we have a farm ordinance which meant that we could back to this Board. This Board has been regulating this farm for approximately 40 years. Rather than continue with the legal dialogue where the lawyers were say "alright, we have this right under this statute and then the Township saying no we have this right under this one" this was the practical solution. Mr. Woodward said to apply to the Board of Adjustment under the Market

Garden Ordinance. As soon as that was presented to the Brill's they set up a push. That is how we ended up here.

Mr. Hyland asked if Lot 140 Block 48.18 currently regulated as a farm.

Mr. Weber said it was a commercial farm.

Mr. Hyland asked if Lot 48 Block 144 is was also a farm.

Mr. Weber answered No. Right now that is also part of the Conditional Use Application.

Mr. Hyland asked if they wanted to combine Lot 48 Block 144 with anything.

Mr. Weber said no.

Mr. Hyland asked when you combine Lot 142 with lot 143 you have 4.97 acres which gets you closer to the five acres that you supposedly need to have animals in a residential zone without a variance.

Mr. Weber - Correct.

Mr. Hyland – when you get to the 4.97 ac. You are closer to the thresholds you now have animals in a market garden which is not something you are supposed to have did I hear?

Mr. Weber said that was correct.

Mr. Hyland asked if by combining the lots we get closer to one threshold but further away from another.

Mr. Weber was not sure we got further away. It means that there are two alternatives that need relief. One is the typical "C" variance for the .3 acres and the other one is a variance from the Conditional Use Standards.

Mr. Hyland asked how much the property taxes were on Lot 142, 143.

Mr. Brill said about 8,000 each.

Mr. Hyland asked how much they would be if rezoned as a farm.

Mr. Brill said it would be approximately 5,000 each.

Mr. Weber asked them to remember this is also confirming the continued use of the property is permitted under the Township Ordinance.

Mr. Shaw said this property is a nonconforming use as an agricultural property and was subject to some fairly extensive litigation associated with the Right to Farm Act. All of these improvements (greenhouses, etc) were all treated as a Use Variance because it was not a permitted use in the zone. There was a finding by the court that it was a former nonconforming use and whenever it was expanded they would come back to the Board of Adjustment because we had jurisdiction over that. What is being proposed here is if it's made a market garden it is now a conditional use. It is still in front of us because they are looking for variances from the conditional use requirements. What it would become is a conforming approved conditional use as opposed to a prior nonconforming use. The property is currently a prior nonconforming use as an agricultural use in that zone. All of the provisions for greenhouses and things of that sort, if you have property which is used for farmland you are allowed to have ancillary uses such as greenhouses, sale areas to the public. What this will have the effect of doing is, it will no longer be treated, should the Board approve it, as a market garden with these conditional use variances. The property will henceforth no longer have to be treated as a prior nonconforming —

Mr. Weber said not quite. It will still be under the Right to Farm and be under the jurisdiction of the judgment. The Board will still retain jurisdiction of the main farm. These are the ancillary lots that would be brought under the market/farm ordinance. It solves the issue in terms of the conditions of the Township as to whether or not the farm can expand there, or whether they need the approval of the Board. Once the Board approves the request for the conditional use then it is a permitted use which is regulated under the conditional use ordinance. They can continue as it has for the past thirty plus years. It would not be included as part of the market. The main area is not part of the application to convert it to market garden. It is only part of the application because we are requesting to change the bathroom and adding/revising one of the farm houses to incorporate the bathrooms.

These periphery properties add to the buffer. They provide the support from the farm. The lot across the street had the wood lock management plan which was approved by the DEP. There are uses as in terms of growing plants which allow them to be a buffer peripheral property.

Mr. Vivona asked if the property across the street would be part of the market garden.

Mr. Weber said that was correct.

Mr. Hyland to clarify – Lot 144 will be Market Garden Lot 142, 143 would be potential market garden if we approve it and Lot 44.18 would not be market garden if we approve it.

Mr. Weber said that was correct.

Mr. Hyland asked if it was possible to approve some of these and not approve others. Is it all in one?

Mr. Shaw felt they were all inter-related. He would say it was up to the applicant to decide. If the applicant did not want to pursue something they could say so otherwise it is being presented to us as an all or nothing.

Mr. Shaw noted Block 144.48 has not been before this board and no testimony has been given. We are not aware of the type of activity on this property. As we are still waiting for your planner maybe we could have some of the factual background laid down as to what the uses are on this property. The engineer commented about a fence on the property that is within the right-of-way.

Mr. Weber thought the engineer may have been talking about the fence in front of the farm house on Green Village Road. Mr. Brill can testify with regard to Block 144 Lot 48

Mr. Brill said this was the only property that he owned across the street. Re: Sheet No. 5 of the Plans prepared by Murphy & Hollows.

To the rear of the property is a county right of way. There is a note on the plan that indicates some farm equipment that will be relocated.

Mr. Hyland asked if the existing dwelling was just below number 390. Mr. Brill answered yes.

Mr. Vivona said in terms of active display – at one point I had some concerns about firewood. Is there any active retail display associated with retail operation across the street?

Mr. Brill said they had relocated the firewood. We still produce the firewood. The firewood is then sold across the street on lot 140.

Mr. Hyland asked where the gardening going?

Mr. Weber said under the market gardening ordinance there would be no produce and it could still be used for the horticultural use. There is a meadow in the back and you have a grove.

Mrs. Kenny asked what the uses were in those areas. Are you growing, storing, wood management?

Mr. Brill said that many years ago we had hay there. Sometime it's used as a quarantine area. It is not a retail area.

Mr. Hyland asked if the lots were not combined is that another threshold we have to get over in order to deem this a market garden.

Mr. Shaw said it would be another variance condition.

Mr. Weber said that they were dividing the lots in order to bring this into compliance.

Mr. Hyland – to clarify – you are asking us to combine the lots to make it a market garden, which is a variance in itself. Market garden we have to give a use variance for what you can put in that market garden.

Mr. Shaw explained that it was not really a use variance but another conditional use.

Mr. Weber said the Board has to decide whether or not this site can accommodate horticultural rather than production of produce and whether or not the site can accommodate the animals.

Mr. Hyland noted that there was another variance they had requested as well and that was the consolidation of two lots with two residential structures on one lot.

Mrs. Kenny questioned the buildings on lots 142, 143.

Mr. Weber referred to sheet 4 of the plans which identified the various buildings on lots 142, 143. Lot 143 is showing a shed, store hay, tools, and equipment. Lot 142 shows a garage, tools and equipment. Note: In the future we will be looking to construct another barn to consolidate all those structures.

Mrs. Kenny asked if the farmhouse was also used to house the workers. Do they live in three houses?

Mr. Brill says is houses his assistant supervisor right now.

Mrs. Kenny asked what the conditions were of the sheds and the farmhouse.

Mr. Brill they comply and have been inspected by the department of labor and state.

Mrs. Kenny said she was not getting 11 buildings.

Mr. Brill said there are 11 accessory structures on 143, 142.

Mr. Weber said that Mr. Madden, (Planner) was now present along with Mr. Murphy (Engineer).

Mr. Vivona thought the only thing they needed Mr. Murphy for was the bathroom issues and he didn't think anyone had any issues with that at this time. How much is .03 of an acre. He was curious because this whole thing is going to revolve around 30 sf.

Mr. John Madden (sworn) listed his qualifications. Mr. Madden said he was familiar with this application. I had reviewed the plans and have had extensive conversations with the applicants and the attorney. I have visited the site. I am also familiar with the Townships regulations/ordinances. The Farm in Green Village is a commercial farm selling horticultural products. They grow plants for sale. It is 32.5 acres and a 9 acre property where some plants go for restoration. The greenhouses, the sale area, and on Lot 142, 143 you have two houses along with a house on lot 48 across the street and one house on the primary property. They are used for seasonal farm. The accessory buildings are for storage, inventory, etc. and related to the actual farm operations. The lot coverage is very low, approx. 5.3 percent. It is a compatible use as it relates to the surrounding properties. On the south side is the Great Swamp and to the left of that is Leo Hinds Landscaping yards. On the north side you have county open space. The relief

being requested is a conditional use variance from Section 30-99.10a and 10 e2 which prohibits the keeping/grazing of livestock/poultry. Interestingly enough this was once a chicken farm. This is a long time farm area. The Farm now has three donkeys and a miniature bull. These are great for the kids that come to the Farm with their parents as it allows them to enjoy the farm pets. Also a C1 variances is needed from Section 30-78C as you have those five acres for the animals in the R1 zone and the average of the lots that the animals are on is 4.97 acres. Section 30-96 permits one principal use on a lot and lots 142, 143 have farmhouses so obviously when combined there are now two farmhouses on one lot (pre-existing). Ordinance 30-96.13A permits no more than 2 accessory buildings on Lot in R1 zone. There are on lots 142, 143 11 accessory buildings. Dealing with the C1 variance relief which is probably the easier one, these are all special circumstances in a sense hardships as they are pre-existing conditions. There are existing structures that are lawfully existing structures and are consistent with a successful farm operation. The benefits outweigh the detriments as they are pre-existing structures. He did not see any detriments. The deficiencies from the 5 acres is minor and will not have much appreciable visible difference in terms of the animals and also the applicant is agreeable for some limitations on the number of animals.

In the terms of use variance prohibiting the raising of livestock, poultry, etc. we have to show that the site can accommodate the deviations with no substantial detriment to the neighborhood. They are part of the farm and they are a public attraction. The animals are well taken care of. They are not next to a residential use. The applicant is willing to do the farm conservation plan. It would be relevant to his type of operation because in preparing for this application I contacted Federal Government which has a Conservation Farm Ordinance. He pointed out that Brill's have a history of beneficial farm practices.

Mr. Weber asked Mr. Madden if it was his recommendation to the Board that if this were to be approved there would be a farm conservation plan.

Mr. Madden said he agreed with that. He just wanted on the record that the conservation plan would be relevant to the type of operation the Brill's have. It wouldn't be something the Federal Government would require which would be for major development.

There really wouldn't be any detriment to the keeping of the animals on the property. He felt the benefit of this whole application is in bringing the application in to compliance with the Market Garden Ordinance. He commented that the Market Garden Ordinance was a creative Ordinance. Having seen other operations of this nature he commented that this was really a nice operation. They have variety and good quality. Their displays are kept nicely in fact the entire operation is one of the best he has seen. As proof of that obviously the applicant has done quite well and the township benefits. It's almost like a little feature of the Township.

Mr. Michaels – the distance between the livestock enclosure and the adjacent lot 144. Isn't there a residence?

Mr. Madden said there was no off tract residence adjacent to this operation. The lot you are referencing is part of Leo Hinds landscape yard. He is the transition between us and residences on Green Village Road.

Mr. Shaw said this is something that we as a board would grant variances for conditions to permit – a market garden is a permitted use in the zone but you have to meet all the conditions. You would have to be before the Planning Board if you had some activity that you were looking to get approval for because a conditional use is a permitted use and if you satisfy all the conditions then it's a Planning Board type issue. If you do not meet all the conditions and you wish to get approval for that purpose then it's in front of the Zoning Board.

Mr. Michaels – re 142, 143 when you think of the combination of these two lots we will have two residences on one lot.

Mr. Madden said in this sense one will be for seasonal workers. That is a special condition

Mr. Michaels in other words it will be used for employees during seasons.

Mr. Vivona – getting back to the Market Garden, the animals seem to be a big issue. How many animals (livestock) are allowed on the 5 acres?

Mr. Madden referenced a Rutgers number and thought it would be about 10.

Mr. Vivona asked if there is a stipulation on the number of animals that you would be keeping.

Mr. Weber said there was. If the Board were to approve the application there would be a limit of 7-8.

Mr. Vivona said the recommendation was no more than 10 so you are under what would be allowed.

Mr. Shaw brought up a question about a fence that had been put up and asked if that situation had been rectified.

Mr. Weber said that fence was along Green Village Road in front of lot 140. We have the County Planning Board approval of this application and we have not heard any complaints from the County in regard to that. If it is acceptable to the Board I can follow up with the County and confirm that. They approved this on October 8<sup>th</sup> 2013. He can submit a copy if needed.

Mr. Vivona noted that the farm was in the wetlands area he asked if all the DEP and Wetlands compliances been addressed.

Mr. Weber said they had. What goes on at the nine acre site is what you see is what you get.

Mr. Vivona asked if there were any other questions/comments from the Board.

Mrs. Kenny asked what was in the Farm Conservation Plan.

Mr. Madden said the Farm Conservation Plan will focus on the use, storage, etc. It will gear toward avoiding/minimizing any adverse effects on the surrounding neighborhood. Regarding the animals we want to make sure there is no offsite drainage on to the neighboring properties. We want to make sure that waste is handled so it doesn't become a nuisance in any way.

Mrs. Kenny asked who was going to write that up. Do we have anything to look at?

Mr. Madden said that would be a condition we would agree to. Your planner would have a chance to review it.

Mr. Weber said that Mr. Ruschke set up a limitation which we agree with. As to which particular authority the Board would recommend that it be sent to, that would be up to the Board. It would involve something like soil till, soil amendments, soil erosion, etc.

Mrs. Kenny thought it might be a standard document for this particular property. You would all work together to make sure all is covered.

Mr. Madden said he worked with Maser Consulting so we have environmental scientists so I would look to them to help me to prepare this.

Mr. Weber said they would be happy to work with the Board Professionals.

Mrs. Kenny asked what the timing on that would be.

Mr. Weber/Madden felt it would be approximately 3 months.

Mr. Hyland – re: Lot 48 Block 144 – he was confused as to what was being asked.

Mr. Weber said they were requesting a use approval for that property with a variance from the requirement that it be used for producing products for human consumption. It would be used for Horticulture.

Mr. Hyland, to clarify, then you are trying to say it will grow stuff.

Mr. Weber said it would be plants.

Mr. Hyland then said because of that we are going to call it a Market/Garden.

Mr. Weber agreed.

Mrs. Kenny said that something had been said about every year you need to get approval.

Mr. Weber said they were in discussion with the tax assessor and as part of the discussion that we had in Morristown it was understood that we were coming here. It had been indicated that if the Board approved this application they would restore the Farm Land Assessment.

Mrs. Kenny – then you would not have to ask every year.

Mr. Weber said it would now be a permitted use under the Market Garden Ordinance.

Mr. Vivona, to clarify, it would not be a pre-existing non-conforming.

Mr. Hyland asked whether Lot 148 was part of it. He was advised that it was.

Mr. Vivona asked if they did not say that originally it was a chicken farm.

Mr. Brill said that was across the street.

Mr. Weber said the main farm had been the Harsch Chicken Farm.

Mrs. Kenny asked what this property (lot 140) originally. She was advised it was chickens way back when, then eggs produce and then a small green house for horticultural.

Mr. Vivona asked Mr. Brill how long he has owned the farm. He was advised it was 36 years.

Mr. Vivona said it was definitely a high end shop. He had been to several others himself and this is well run and the atmosphere is nice. You are not killing the soils and you don't have to worry about erosion.

Mr. Vivona opened the meeting to the Public.

Mrs. Stillinger, Chairwoman of the Chatham Township Environmental Commission. She said that we were lucky to have a facility like this in our town as well as the Great Swamp Refuge which takes up a third of the town. We have to balance things. She had submitted a copy of their remarks was mostly concerned with preserving wetlands and preventing bad stuff from getting into the refuge or any harm to the wetlands. Wetlands themselves have a high value for many reasons.

Mrs. Stillinger didn't know if it was relevant although it maybe. She said there were some other facts about that lot 48 mentioned about the storage of equipment. A couple of the main points – the wetlands delineation shown on the plans do not appear to agree with the DEP Wetland Maps. However the net effect is about the same. Things look as though they may be shifted a little bit. All the wetlands on the entire property are, with the exception of the resource value, because they drain into the refuge and they are a potential habitat for an endangered species. The storm water on lot 48 drains into Lonanaka Brook. Extensive wetlands occur throughout the regions and are not just occurring on this property. The wetlands occur in the area so it's a regional kind of consideration. The Environment Commission has

some suggestions. Part of our job is to be beyond the standard deviation but mark remarks that at the very least give you something to think about.

#### Suggestions:

- The applicant should get new wetland delineation from the DEP in view of the fact that the maps don't match.
- Think about reducing impervious coverage
- On lot 49, every effort should be made to retain as many trees as possible because wooded portion of the lot may serve as habitat for certain species. Trees retain and control storm water and help to clean the water.
- Before any use of the soil takes place on lot 48 the soil should be tested for pesticide residue from the possible previous farming.
- The currently undisturbed wetlands on lot 48 should remain undisturbed, free from activities that would alter drainage or compact soil.

Mr. Weber commented that the statement that we made – what you see is what you get – the Environmental consultant had told Mr. Brill he agrees. He has the boxwood grove and the meadow and the woodlot management. That's it.

Mrs. Stillinger said that sounds fine but felt it should be in writing in any approval of this application. Forest management plans have to address wetlands to be in conformance with the Right to Farm Act. She would hope that the Forest Management Plan/Farming Conservation Plan would be reviewed by the Board before the application is approved.

Mr. Weber said with regard to that we have the report from the DEP approving the woodland management plan dated November 6, 2014.

Mrs. Stillinger affirmed that there was a Forest Management Plan. She asked if the Board had seen it.

Mr. Weber said they have not seen it. It was part of Mr. Ruschke's recommendations. He asked if the Board wanted it marked and included as part of the package. They were advised to do so.

Mrs. Stillinger – re: Farming Conservation Plan should have mentioned in it the items previously mentioned.

Mrs. Stillinger continued re: Lot 48. The activities proposed should be listed in writing so it is clear in everyone's mind what activities will be going on there. The wooded row, according to the Right to Farm Act it has to be maintained and according to regulations.

Mr. Vivona commented on a few things that Mrs. Stillinger had mentioned. The comment about getting a new LOI for lot 48, he believed that was a comment mentioned in Mr. Ruschke's earlier report which he took out of his last report as a requirement.

Mr. Ruschke said basically what they had in Ecco Sciences was to have their consultant go out and actually do a delineation approved by the DEP. I asked for an accurate delineation so I am sure they will do that. I am sure they will propose exactly what is on the plan that will go to the DEP.

Mrs. Stilllinger questioned for wetlands you have to have the delineation on the plan.

Mr. Weber said with the area they have a 150 ft. buffer from the established tributary. Basically the entire site is looked at as wetlands.

Mrs. Stillinger – except for your proposed storage on the west side.

Mr. Weber said that was part of the transition area. It comes down to "what you see is what you get"

Mrs. Stillinger thought it may not be in the transition area. You have to take into account the distance from the property to all the wetlands.

Mr. Shaw said we could reference in the Resolution the areas that are approved and because of the overall conditions there is no need for a separate LOI.

He wanted to go through the items to make sure that we address them all to the extent that you believe they need to be addressed. Request the applicant to reduce the effects of various cover. The only change they are making in the site plan currently is to basically reduce the amount of impervious coverage by not putting in a separate building where there bathrooms were going to be; to make a slight expansion in the size of the building. That is the only sight plan change which is described or provided for in the application. There is actually a reduction in impervious coverage because they are taking out what was a separate building. Re: Lot 48 there be no trees removed so the concern about protecting the other potential endangered species will not be an issue. There was an onsite inspection of the woodland properties and has been determined to be compliant as a plan and with NJAC. The activity on the land is appropriate for the existing resource information reported on the woodland data form. The soil on lot 48 it should be tested for pesticides. They have addressed the underground storage tank. The wetlands will remain undisturbed in accordance with what the approvals are. There is forest management plan but there is a separate conservation plan that is going to be proposed. What they are proposing to have is a conditional approval. The Board would probably suggest that it would be subject to the review/approval of the Township Engineer as a condition of approval. It has been stated here what is permitted on Lot 48 and has been described as: the area of boxwood: planting as a quarantine or area for other things that arrive from a horticultural standpoint; area that might sometime be subject to additional hay removal and the area previous approved by the state for the woodland management plan. We can put that in the resolution.

Mr. Stillinger thought that would be fine as long as there are no additional wetlands substantially disturbed.

Mr. Shaw said that at this point we have gotten all of the reports and I think the Board can take action. I can include as a condition those things I just went over.

Mr. Vivona asked if there was any further public comment. None heard.

Short discussion on Poultry

Mr. Shaw reviewed the conditions on Lot 48 as he previously discussed. Relative to the other lots which are being consolidated it would be a requirement that the two houses would be restricted in their use for basically farm employees and any other type of use for residential purposes would require further review by the Board. There would be a restriction again on 142, 143 which will be merged and be restricted to no more than 7-8 farm animals. The current restriction on poultry is from a prior resolution and is not something we need to address. The peacocks are not located in the property that is in the garden market garden ordinance. We will agree to have seven peacocks. There are no restrictions on the bathroom area. This will need 5 votes to approve.

This would grant the site plan approval for the bathroom, two C variances associated with the two principal dwellings on the one lot as a result of consolidation, accessory buildings on one lot; there is also a variance for the residential district where one lot would be allowed to have farm animals on a 5 acre parcel and the consolidated lot would be 4.97 acres; there would be a conditional use variance for allowing a horticultural use as opposed to produce being produced on site; and a variance for the farm animals on site.

A condition of approval would be the filing of a deed merging the two lots.

Mr. Vivona asked if someone would make a motion. A motion was made by Mr. Williams seconded by Mrs. Romano to approve all variances with the conditions as discussed.

Roll Call: Mr. Vivona, Mrs. Kenny, Mr. Williams, Mrs. Romano, Mr. Styple, and Mr. Hyland. In Favor Mr. Borsinger abstained.

Motion to Adjourn - All in favor

Respectfully submitted:

Mary Ann Fasano Transcribing Secretary